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IN THE

# Supreme Court of the United States

OCTOBER TERM—1957

No. 218

MASSEY-HARRIS-FERGUSON, LIMITED

*Petitioner,*

*vs.*

HON. MARION SPEED BOYD, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TENNESSEE,

*Respondent.*

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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## RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

### Foreword.

If petitioner had made just a halfway statement of the evidence considered by respondent, the following rather lengthy brief and extensive appendix would have been utterly unnecessary. It would have admitted itself out of this Court with the following from the petition:

> "The facts upon which the District Court relied in asserting jurisdiction were conceded by the Petitioner." (Petition, p. 19).

### JURISDICTIONAL STATEMENT.

A careful check of the Rules of this Court indicate that the only possible basis for jurisdiction would be

Rule 19(b). It is believed that the petition fails to present a case within the rule, because—

1. (a) It asks this Court to review and reverse the action of the Court of Appeals for the Sixth Circuit in declining to review and reverse by the extraordinary writ of mandamus before final judgment an interlocutory order made upon a fact question. Whether right or wrong, the respondent made his interlocutory finding, not arbitrarily, but upon 453 pages of testimony, several affidavits, and several hundred pieces of documentary evidence.

(b) There is no conflict between the ruling of the Court of Appeals and this Court, or any other Circuit, with respect to the question here involved. Review of the decisions discloses that the opinion of the Court of Appeals is in accord with the decisions of this Court and all other circuits.*

(c) No important State or Territorial question has been decided in any way in conflict with State or Territorial Law; no important question of Federal Law has

*Starting with Eastman Kodak Co. v. Southern Photo Materials Co., 273 U.S. 359, followed by Roche v Evaporated Milk Association, 319 U.S. 21, and Bankers Life & Casualty Co. v. Holland, 346 U.S. 379; and comparing In the Matter of Josephson (*1st Cir.*), 218 F. (2d) 174; In Re Previn (*1st Cir.*), 204 F. (2d) 417; U. S. v. Byers (*2d Cir.*), 144 F. (2d) 455; Magnetic Eng. & Mfg. Co. v. Dings Mfg. Co. (*2d Cir.*), 178 F. (2d) 866; Re: Eastman Kodak Co. (*3rd Cir.*), 48 F. (2d) 125; American Airlines v. Forman (*3rd Cir.*), 204 F. (2d) 230; National Bondholders Corp. v. McClintic (*4th Cir.*), 99 F. (2d) 595; Hyman v. McLendon (*4th Cir.*), 103 F. (2d) 294; Re: American Employers Ins. Co. (*5th Cir.*), 91 F. (2d) 731; Re: Illinois Central R. Co. (*5th Cir.*), 192 F. (2d) 465; Direct Transit Lines, Inc., v. Hon. Raymond W. Starr (*6th Cir.*), 219 F. (2d) 699; Sunbeam Corp. v. Picard (*6th Cir.*), 227 F. (2d) 53[illegible]; Comfort Equip. Co. v. Steckler (*7th Cir.*), 212 F. (2d) 371; R. C. A. v. Igoe, (*7th Cir.*), 217 F. (2d) 218; Carr v. Donohoe (*8th Cir.*), 201 F. (2d) 426; Sound Inv. & R. Co. v. Harper (*8th Cir.*), 178 F. (2d) 274; Hydraulic Press Mfg. Co. v. Moore (*8th Cir.*), 185 F. (2d) 800; Shaheen v. Shriver (*9th Cir.*), 221 F. (2d) 715; Fish v. Kennamer (*10th Cir.*), 37 F. (2d) 243, cert. den. 281 U. S. 744; Loew's. Inc., v. McGuire, Ct.App. D.C., 205 F. (2d) 719, *no conflict can be discovered.*

been decided which has not heretofore been but should be decided by this Court; no Federal Question has been decided in a way in conflict with applicable decisions of this Court, and there has been no departure from the accepted and usual course of judicial proceedings or a sanction by the Court of Appeals of a departure by the District Court, which should call for an exercise of this Court's power of supervision.

(d) The outmoded and threadbare assertion that petitioner will be subjected to unnecessary expense, harrassed and required to participate in a long drawnout trial has been repeatedly considered and rejected.*

Petitioner could almost be said to expose itself to ridicule by advancing this plea. Duncan, president of the **parent company,** which insists that it should not be sued anywhere in the United States and threatens reprisals, wrote the Memphis Branch Manager as late as December 9, 1955:

> **"... I have remained convinced that the backbone of the Company's strength and by far the biggest growth possibilities could be found in the great United States farm implement market." (Exh. IA to Haggard, app. p. 53b).**

This action was instituted August 21, 1956. Very shortly after that petitioner's subsidiary filed its answer. That defendant (wholly owned subsidiary of petitioner), represented by petitioner's present counsel—three members

*Roche v. Evaporated Milk Assn., 319 U.S. 21, 87 L. Ed. 1185; Bankers Life & Casualty Co. v. Holland, 346 U.S. 379, 98 L. Ed. 106; Re: Sylvania Electric Products (*1st Cir.*), 220 F. (2d) 423; Petition of Therianos, (*3rd Cir.*), 171 F. (2d) 886; Sunbeam Corp. v. Picard (*6th Cir.*), 227 F. (2d) 596; Comfort Equip. Co. v. Steckler, (*7th Cir.*), 212 F. (2d) 371; Sound Inv. & R. Co. v. Harper (*8th Cir.*), 178 F. (2d) 774; Hydraulic Mfg. Co. v. Moore (*8th Cir.*), 185 F. (2d) 800.

of a leading New York law firm, one lawyer from Racine, Wisconsin, one from Milwaukee, Wisconsin, and two members of a leading Memphis law firm—filed notices to take pre-trial depositions of eighteen witnesses on September 7, 1956; caused comprehensive subpoenaes duces tecum to be issued; commenced taking depositions September 18, 1956, suspended September 21, 1956, at noon; refused to resume until required by court order entered November 26, 1956 (said order required the taking of the depositions to be resumed January 7, 1957, but they were not resumed until 1:00 P.M., February 15, 1957); examined one witness for 23 days, and refused to terminate that examination until required by court order; took the deposition of another witness in New Orleans, Louisiana, with three lawyers present, approximately twenty days; commenced and suspended the depositions of other witnesses; and has roved at random through plaintiffs' records and indiscriminately numbered for identification thousands of documents. Obviously petitioner is paying all of that expense through its wholly owned subsidiary, and obviously there will be no duplication of those incurred expenses and delays by requiring petitioner to defend.

Those activities, extending over three hundred and thirty-nine days (up to July 27, 1957), at tremendous expense borne by petitioner through its wholly owned subsidiary, is hardly consistent with a sincere desire to avoid the expense of protracted litigation.

Respondent has, out of respect for the United States Court of Appeals and this Court, refused plaintiffs' every effort to require the petitioner to answer and to set the case for trial.

(e) The effort to alarm this Court, not to say panic it, by urging a heretofore unknown ground for certiorari —the claim that respondent's interlocutory order will result in serious harm to international commercial relations, and to domestic and foreign commerce of the United States (Pet., p. 18), offering to support it with the purported statement of the Premier of Ontario and the purported provisions of Canadian Law (App. to Pet., pps. 17a-21a) presents nothing to this Court sitting in review for the correction of errors. No such contention was advanced before respondent. *The purported statement of the Premier and the alleged provisions of Canadian Law were not introduced in evidence.* They could only be considered by respondent, the Court of Appeals, or this Court if properly introduced in evidence in the nisi prius court. The federal rule is that foreign law is a fact which must be pleaded and proved. The federal courts do not take judicial notice of foreign law.*

Tennessee requires laws of a foreign country to be pleaded and proved; its Courts cannot take judicial notice thereof. Tennessee Code Anno., 24-611; Evans v. Sheridan, 28 Tenn. App. 90, 186 S.W. (2d) 911.

Obviously the purported statement of the Premier is in the same situation and will not be considered by this Court because it was not introduced or proved in the trial court. General Portland Cement v. Perry, (7th Cir.), 204 F. (2d) 316, 320. Also see, Evans v. Sheridan, 28 Tenn. App. 90, 186 S.W. (2d) 911. Letters from an

*Black Diamond S. S. Corp. v. Stewart, 336 U. S. 386, 396-397, 93 L. Ed. 754; Cuba R. R. Co. v. Crosby, 222 U. S. 473, 479, 56 L. Ed. 274; Liverpool & G. W. Steam Co. v. Phoenix Ins. Co., 129 U. S. 397, 32 L. Ed. 788; Walton v. Arabian Am. Oil Co. (2d Cir.), 233 F. (2d) 541, cert. den. 352 U. S. 872; Liquidating Corp. v. Brownell, D.C. Del., 130 F. Supp. 691.

eminent Canadian barrister are in the Court of Appeals record refuting petitioner's claim with respect to Canadian Law.

There is nothing in Rule 34 or in any other of the Federal Rules of Civil Procedure which would permit a trial judge to order documents sent out of Canada in contravention of Canadian Law. This respondent hopes that it can be safely assumed that he will, when making orders with respect to production of documents for inspection and copying, accord to petitioner all the protection to which it is entitled.

(f) Petitioner's feeble reliance on LaBuy v. Howes Leather Co., Inc., 352 U.S. 249, 1 L. Ed. (2d) 290, when even casually considered, falls of its own weight. The full extent of that holding is that a District Judge will be prohibited by mandamus from abdicating his judicial duties in favor of a Master (1 L. Ed. (2d) 290, at p. 297), and this Court said:

> "Certainly, as the Court of Appeals found here, there was a clear abuse of discretion." (1 L. Ed. (2d) 290, at p. 298).

The opinions in LaBuy and Bankers Life and Casualty Co., supra, were both written by Mr. Justice Clarke. It appears with certainty that the Court did not intend to retract or restrict anything said in the Bankers Life case. Referring to the Bankers Life case, Mr. Justice Clarke said in LaBuy:

> "* * * The former case did not concern rules promulgated by this Court, but rather, an Act of Congress, the Venue Statute. Furthermore, there we pointed out that '* * * All Writs Act is meant to

be used only in the exceptional case where there is clear abuse of discretion or 'usurpation of judicial power * * *'"

Petitioner did not mislead the Sixth Circuit by its fallacious attempt to justify mandamus in this case by the holding in LaBuy. (Pet.'s App., p. 7a).

(g) Petitioner urges as a ground for jurisdiction an observation in the opinion of the Court of Appeals (Pet.'s App., p. 6a) that the question is a difficult one and the ruling doubtful. (Petition, pps. 9 & 26). It is not believed that there is a reported or unreported case holding that the extraordinary writ of mandamus should be granted to reverse an interlocutory ruling of a District Court on a question of fact because the question was either difficult or doubtful. It may be that the distorted, shaded, not to say colored, assertions in the petition for mandamus, with no reference to the evidence in the case, may have engendered a transient thought that the question could be considered difficult or doubtful. Petitioner had attempted to have its petition for mandamus ruled on without transmitting the record in the District Court to the Court of Appeals. It was only after plaintiffs' counsel moved to dismiss and insisted that the question could not be considered by the Court of Appeals without the record that petitioner's counsel applied to respondent for an order sending the record up. It is believed that every reported case denies the writ of mandamus where the court finds the question to be difficult or doubtful.*

2. Jurisdiction is further invoked in a manner unknown in Federal Jurisprudence. Petitioner asks this

*Re: Hussein Lutfi Bey, 256 U.S. 616, 619; Re: Muir, 254 U.S. 522, 533; Re: Chicago, R. I. & Pac. R. R. Co., 255 U.S. 273, 279.

Court to review and reverse the Court of Appeals' refusal to reverse by the extraordinary writ of mandamus an interlocutory ruling of respondent made on a fact question, where the respondent was acting in his recognized and established judicial capacity. The opinions of respondent and the Court of Appeals (pps. 10a-11a & 4a, App. to Pet.) state that respondent decided this question of fact on—"several hundred pages of depositions, which included numerous exhibits, * * *." (App. to Pet., p. 4a). Petitioner is asking this Court to grant certiorari while at the same time withholding all that evidence from this Court. It is not believed that the rule of this Court permitting the filing of the record after the writ is granted can be relied on in reply to the statements in this paragraph. Petitioner is asking the Court to grant the writ without giving it the benefit of any evidence. Petitioner's appendix filed in the Court of Appeals falls far short of complying with the rules of that Court providing for the use of appendices. Those rules surely do not contemplate withholding from the Court of Appeals all evidence upon which the District Judge rested his decision. Petitioner has not met the requirements of Rule 21 (3) of this Court relieving the petitioner of the requirement in paragraph 1 of Rule 21 which requires the record in the lower court to be filed with the petition. By causing the record to be sent to the Court of Appeals Petitioner must have felt that its appendix was wholly deficient.

It is believed that the motion for leave to file petition for writ of mandamus (Pet. p. 31) can be summarily disposed of. Rule 21(3) requires a statement with particularity why the relief sought is not available in any other court. The petition for certiorari now under consideration discloses that resort was had to the Court of

Appeals for the Sixth Circuit for mandamus, and that Court's jurisdiction invoked. The petition for certiorari does not challenge that Court's jurisdiction, but admits it. The jurisdiction of courts of appeal to entertain petitions for writs of mandamus and alternate petitions for writs of prohibition is clearly recognized in LaBuy, supra. Petitioner has at every step admitted the jurisdiction of the Court of Appeals. It has never denied it.

**The Evidence Was More Than Adequate to Support An Interlocutory Finding Of Jurisdiction.**

It is believed that the Jurisdictional Statement is an adequate answer to the petitions for certiorari and mandamus. However, respondent is not willing for the slightest impression to be left that there has been a usurpation of judicial power or an abuse of discretion. With the Court's permission a statement of some, but not all, of the evidence upon which respondent overruled the motion to quash is submitted in support of this reply. Since petitioner asks the Court to act without the benefit of the record, the following statement is supported by an appendix abridged and shortened as much as possible.

The Marshal's returns of the services of process are set forth in the appendix, page 1b.

**Petitioner Regularly Transacted Business In Respondent's Judicial District Directly From Its Canadian Headquarters, Used The Memphis Branch Directly From Its Canadian Headquarters; And Used Its Subsidiary As Its Marketing Outlet And As Its Completely Dominated And Controlled Instrumentality.**

Plaintiffs filed a sworn response to petitioner's motion to quash, denying all of the material allegations in the affidavits filed in support of that motion; alleging that petitioner had continuously shipped goods manufactured

by it to all or most parts of the United States, and had continuously shipped goods manufactured by it to Memphis, Tennessee, within the Western District of Tennessee; averring that it carried on a tremendous business in the Western District of Tennessee through its own instrumentalities and agencies; denying that petitioner's subsidiary had been independently operated; averring that the subsidiary's predecessor was wholly owned by petitioner, and organized as an outlet for the sale in the United States of petitioner's products; averring that the subsidiary has at all times been wholly owned, dominated by, and utilized as an instrumentality and agency by petitioner, far beyond the control inherent in stock ownership.

Howard Sullins, President of both plaintiffs, filed his affidavit in support of the response. The affidavit states that at the time of amalgamation plaintiffs held cancellable franchises from Harry Ferguson, Inc.; that Southland Tractors, Inc., also handled other lines, including the Gleaner Combines; that on or about September 8, 1953, Stoup and Sweeney, Vice Presidents of the United States subsidiaries, came to Memphis and discussed at length future plans for marketing Ferguson and Massey-Harris products in West Tennessee; assured plaintiffs that the lines were complementary and not competitive, urged the affiant to cooperate in getting Ferguson dealers to take Massey-Harris franchises, advised affiant that Southland Tractors would not be permitted to continue marketing the Gleaner Combines, *or any other lines which would compete with Massey-Harris products*, and that Southland Tractors gave up that combine line; that affiant had heard Bloom (Petitioner's First Vice President) testify that he sent Stoup and Sweeney to Memphis.

That affidavit stated that shortly after September 8, 1953, the Massey-Harris Branch Manager in Memphis, together with other representatives, called on affiant in Memphis to cooperate and expedite cross-franchising of Ferguson dealers, and urged affiant's cooperation, advised that they had made the call subject to Duncan's instructions, and that Duncan was President and Chairman of the Board of Massey-Harris-Ferguson, Ltd.; that Duncan returned to Memphis in the latter part of 1955, discussed plaintiffs' needs for additional implements, and with other officials inspected the entire plant of Southland Tractors, Inc.; that in April, 1954, a Ferguson tractor was shipped to Southland Tractors, to be delivered to Canadian engineers of the Limited Company for use in field testing petitioner's newly developed implements; that petitioner advertised its products in national magazines which were widely circulated in West Tennessee; that shortly after amalgamation petitioner commenced shipping implements and parts from its Canadian plant to Southland Tractors in Memphis, Tennessee, with a considerable degree of regularity, to fill orders for products originating in Memphis, Tennessee.

The affidavit relates numerous instances in which petitioner directly corresponded with Southland Tractors by mail, and is abundantly supported by exhibits, including shipping orders on petitioner's printed forms and bills of lading, showing shipments direct from petitioner's Canadian plant to Memphis, Tennessee.

*Petitioner went to trial on the issue here involved without denying anything contained in the response or Sullins' affidavit and without calling Sullins and cross-examining him.*

Plaintiffs' response and Sullins' supporting affidavit should have been a part of petitioner's appendix. Those documents are narrated to reduce the size of the record and printing expense. Pursuant to subpoena duces tecum plaintiffs took the depositions of officers and representatives of petitioner's wholly owned subsidiary covering 453 pages, and caused the production and introduction of several hundred documents. Plaintiffs applied for letters rogatory addressed to the Supreme Court of Ontario seeking to examine officers of petitioner and to examine documents, upon the sole question of whether petitioner had transacted business in West Tennessee. The Limited Company vigorously and strenuously opposed the application. After a full hearing this respondent ruled that plaintiffs were entitled to take that proof. Letters rogatory limited solely to that one issue were accordingly issued, making Presidential Request for the cooperation of the Supreme Court of Ontario. Disregarding, if not to say defying, respondent's ruling on its opposition, petitioner employed a Queen's counsel and persuaded the Canadian nisi prius Court to refuse compliance with the Executive Request. Plaintiffs urged the logical inferences to be drawn from petitioner's "disturbed and distressed" fear of what the evidence might disclose. Respondent found adequate evidence in the testimony and documents to make reliance upon inferences unnecessary.

The testimony of petitioner's Executive Vice President, officers and agents of the subsidiary, and the documents introduced, disclosed — —

1. The Limited Company's activities in the United States and West Tennessee with respect to the market-

ing of Ferguson products after acquiring the stock of Harry Ferguson, Inc.

2. The Limited Company's direct and continuous business transactions in West Tennessee.

3. The Limited Company's disregard of the subsidiary's corporate identity and its use of the subsidiary as a marketing division.

4. The conspiracy and the overt acts claimed by plaintiffs to have been committed in West Tennessee, taking this case completely out of the sweep of Cannon Mfg. Co. v. Cudahy Co., 267 U.S. 333, and bringing it within the scope of U.S. v. LeHi Valley R. Co., 254 U.S. 255, 65 L. Ed. 253, Industrial Research Corp. v. General Motors Corp., 29 F. (2d) 622, and the unbroken line of decisions hereinafter cited.

**The Limited Company's Activities In The United States And West Tennessee With Respect To The Marketing Of Ferguson Products After Acquiring The Stock Of Harry Ferguson, Inc.**

(a) Prior to August 16, 1953, Harry Ferguson, Inc., was engaged in manufacturing farm machinery, tractors and implements, with its headquarters, offices and manufacturing plant in Detroit, Michigan. It marketed its products through distributors, who in turn marketed them through dealers. It was marketing all of its products through twenty-nine distributors, and in turn through approximately two thousand dealers, who constituted the distributors' dealer organizations.

(b) The trade areas of the Massey-Harris Branches and the Ferguson distributors were generally the same.

(c) Plaintiffs were Ferguson distributors. Southland Tractors, Inc., had its principal place of business in Memphis, Tennessee, and its territory embraced West Tennessee, North Mississippi, Arkansas, and a small part of Alabama. The Massey-Harris Memphis Branch operated in substantially the same territory. Memphis is in respondent's judicial district. Farm Tractors, Inc., was owned by Southland Tractors, Inc. Its principal place of business was in Oklahoma City, and its trade territory was the State of Oklahoma and a part of the Texas Panhandle. The Massey-Harris Branch in Oklahoma City operated in the same territory.

(d) Sometime prior to August 16, 1953, Massey-Harris Company, Ltd., acquired all of the capital stock in Harry Ferguson, Inc., and other Ferguson companies. A letter from the President of the Limited Company to its stockholders, referring to the merger as the amalgamation, stated that petitioner had thereby acquired all Ferguson patents, all Ferguson know-how, and all Ferguson business. (App. p. 4b).

(e) The amalgamation was announced by radio, news release, telegrams and letters on August 16, 1953. The change of petitioner's name to Massey-Harris-Ferguson, Ltd., was simultaneously announced. From and after August 16, 1953, the corporate identity of Harry Ferguson, Inc., was obliterated, except that its charter was not surrendered. On that date Massey-Harris-Ferguson, Ltd., placed its Executive Vice President, H. H. Bloom,* in full charge of all Harry Ferguson operations, and he testified that from that date he dictated every policy and

*Bloom's official title was carried in petitioner's Annual Reports—"First Vice-President, President United States Division." (App. pps. 97b & 107b).

supervised and directed all management and operations. (App. pps. 2b-3b).

(f) Bloom testified that, acting in his capacity as Vice President of petitioner, and in no other capacity (App. p. 3b), he thereafter ran the business of manufacturing and marketing Ferguson tractors and implements. He was never an officer or a Director of Harry Ferguson, Inc., or on its payroll. (App. pps. 3b-4b). Ferguson tractors and implements were sold and shipped in interstate commerce, and into the Western Judicial District of Tennessee, as before the amalgamation, and representatives, acting under Bloom's direction, supervision and control, continued to regularly travel in West Tennessee, regularly transacting business with Southland Tractors, Inc., in Memphis. Those representatives continuously supervised the business of Southland Tractors, Inc., and sold Ferguson merchandise within the District. (App. pps. 12b-13b). All Ferguson business in West Tennessee was transacted by petitioner in that manner until September 1, 1954, at which time Harry Ferguson, Inc., was formally merged into the Massey-Harris Company, petitioner's wholly owned subsidiary and its only outlet in the United States for its products manufactured in Canada. Bloom and Hooker left no doubt that all Ferguson business (including its regular business in West Tennessee) was carried on by the Limited Company. (App., pps. 3b & 9b, 12b-13b). Bloom wrote identical letters *to Ferguson distributors* and *dealers* on the stationery of the *Limited Company*, and signed them as *First Vice President of the Limited Company*, stating in part:

> "We, who will be responsible for the management of the parent Massey-Harris-Ferguson, Ltd., want

to give you assurance, etc." (App., p. 14b).

And:

> "It is not *our intent* to eliminate any Ferguson or Massey-Harris dealer who is performing satisfactorily." (App., p. 14b).

And:

> "*In our opinion,* it is basic that the distribution of Ferguson products continue the same pattern that was in existence before the announcement was made of the intent to amalgamate the Ferguson interests and Massey-Harris Company, Ltd. *into the new parent company, Massey-Harris-Ferguson Company, Limited.*" (App., p. 16b).*

The correspondence leaves no doubt that the Limited Company was dealing direct with the distributors** and with both Massey-Harris and Ferguson dealers, and was not dealing with them through the subsidiary.

(g) One of Bloom's early activities was the cancellation of six Ferguson distributors. All telegrams and letters in appendix pps. 13b, 17b, 18b, 19b, 20b, 21b, 22b, 23b, 24b & 25b were sent pursuant to Bloom's instructions. (App. pps. 6b, 7b, & 29b). They are all typical. The business and inventories of each of those distributors was taken over by Massey-Harris Branches in the respective trade areas. Bloom selected and designated the persons who called upon each of those distributors and directed them how to proceed. (App. pps. 4b-6b). He caused letters and telegrams to be sent to all other Ferguson distributors giving assurance that they would be retained. His telegram and Stoup's telegram to plaintiffs'

*Unless otherwise indicated, all emphasis in this brief and appendix supplied.

**Letter from Toronto to Plaintiff (App., p. 33, 34b) is typical.

President were typical. Those two telegrams were sent into respondent's judicial district and dealt expressly with petitioner's business. (App. pps. 13b & 25b-26b).

(h) Very soon thereafter Bloom sent two representatives to Memphis to discuss the terms on which plaintiffs would be continued as Ferguson distributors. (App. p. 5b). While in Memphis those Limited Company representatives prevailed upon plaintiffs to enter upon a program whereby their franchised Ferguson dealers would be persuaded to also be franchised to handle Massey-Harris products, and Massey-Harris franchised dealers would be prevailed upon to handle Ferguson products upon the express assurance that the two lines would be continued as complementary and not competitive. These activities of the Limited Company were among the many activities carried on by the Limited Company in the Western Judicial District of Tennessee, and are also claimed by plaintiffs to be a part of the alleged conspiracy in violation of the Anti-Trust Laws.

(i) There was no corporate or contractual relationship between Harry Ferguson, Inc., and the Massey-Harris Company. The stock in each was wholly owned by the Limited Company. Bloom, Executive Vice President of the Limited Company, was in complete charge of both. The headquarters of the Massey-Harris Company were in Racine, Wisconsin. No person was an officer or Director of both Harry Ferguson, Inc., and the Massey-Harris Company. (App. pps. 3b-4b). Shortly after Bloom took over all Harry Ferguson, Inc., activities, he transferred the Ferguson sales organization to the headquarters and offices of the Massey-Harris Company at Racine and thereafter directed the operations of each (App. p. 8b). After resignation of Ferguson officials Bloom transferred a key official of the Massey-Harris

Company from Racine to Detroit and made him General Manager of the Ferguson operations there. (App. p. 7b).

(j) H. G. Klemm, formerly with Harry Ferguson, Inc., was made a Vice President of the Limited Company, and charged with the duty of coordinating all engineering in Toronto, Racine and Detroit. He was placed in charge of "All North American Engineering." (App. pps. 27b-28b & 79b). Klemm's headquarters are still in Detroit. (App. p. 1b).

(k) On October 2, 1953, Bloom wrote Ferguson Distributors, who had not been cancelled, confirming their future, and said:

> "In some areas we have placed the distribution of Ferguson products in a special division of *our* Branches." (App. p. 16b).

(The Limited Company had no branches in the United States other than the Massey-Harris branches, which it now claims for the first time belong to the subsidiary.)

On the same day (October 2, 1953) Bloom wrote all Ferguson dealers, referring to the amalgamation of the world-wide Ferguson interests—"into a new company, Massey-Harris-Ferguson, Ltd." (App. p. 14b). That letter was signed by him as First Vice President of the Limited Company.

Bloom admitted that the letters to Ferguson dealers (App. pps. 18b-25b) were written pursuant to his direction. (App. p. 6b-7b).

Bloom admitted that he caused letters to be written to Ferguson distributors and dealers enclosing a publication which contained the following:

"Amalgamation of Ferguson and Massey-Harris will provide an impressive net of manufacturing facilities, extending all over the World, including France and the United States at Detroit, Racine, Batavia and Fowler, California; plus others in Canada, England, Scotland, South Africa, France and Germany." (App. 4b).

Bloom's testimony and his letters leave no doubt that he continued to supervise and direct the business in West Tennessee the same after September 1, 1954, as he did before the September 1st merger.

Boardman, who looked after the Ferguson business in West Tennessee from the beginning, and under Bloom's supervision and direction, has continued right on doing the same work since September 1, 1954. (App. pps. 12b-13b).

*Petitioner has not denied any of this.*

**The Limited Company's Direct And Continuous Business Transactions In West Tennessee.**

(a) The personnel of the Limited Company in Toronto transacted business directly in West Tennessee, bypassing the officials and executives of the subsidiary at Racine. (App. p. 5b, 6b, 10b, 12b, 13b, 34b thru 46b, 47b thru 68b).

Bloom discussed the business of the Memphis Branch with the Branch Manager; Duncan, Chairman of the Board and President of the Limited Company came to Memphis and inspected the Branch plant on one occasion; and on another occasion Duncan came to Memphis,

discussed with the Memphis Branch Manager the franchising of Ferguson dealers to handle Massey-Harris products. (App. pps. 34b-36b).

Haggard reluctantly admitted that while Duncan was in Memphis there was some discussion—

> "Q. On how the relationship in Memphis would be affected between the branch and the distributor, Southland Tractors, Inc., didn't he?
>
> A. Yes, sir." (App. p. 37b).

The Memphis Branch Manager admitted that he did carry out Duncan's suggestions with respect to cross-franchising Ferguson and Massey-Harris dealers. (App. pps. 35b-36b).

(b) The Memphis Branch Manager was required to attend annual meetings of branch managers, held in the United States, and which were attended by Duncan, Bloom, Burgess and Metcalfe, all executives of the Limited Company, and by key personnel from Toronto, who would talk on sales, credits and engineering. (App. pps. 39b-40b & 40b-41b).

(c) The Limited Company shipped products with an annual dollar volume direct from Canada to the Memphis Branch and to dealers in West Tennessee of approximately $3,000,000.00 (App. pps. 45b-46b). Petitioner's shipments from Canada to the Memphis Branch and to its dealers, including those in West Tennessee, made up sixty to seventy-five (60% to 75%) percent of that branch's total volume. (App. 44b-45b).

(d) Bloom admitted that the real estate occupied by

the Massey-Harris Branch in Memphis is included in the asset column of the Massey-Harris-Ferguson, Limited, Balance Sheet under the heading "Lands, Buildings and Equipment—$30,713,628.00, and that the Inventory of the Massey-Harris Branch in Memphis is included in the item in the asset column showing Inventories—$87,133,696.00. (App. pps. 70b-71b & 108b).

(e) Return shipments were made direct from the Memphis Branch to Toronto. (App. p. 46b).

(f) Bloom wrote the Memphis Branch Manager on September 10, 1955, from Toronto, requiring him to furnish material for a magazine article to be written by Bloom. (App. p. 51b).

(g) Toronto officials kept strict supervision over parts inventory in the Memphis Branch (App. pps. 47b-49b). Toronto also kept strict control over the future requirements of the Memphis Branch for Canadian made implements as well as other branches in the United States. (App. pps. 49b-51b).

Bloom wrote all Vice Presidents and Department Heads insisting upon curtailment of expenses, and included the Memphis Branch Manager on the mailing list. (App. 52b).

Duncan wrote the Memphis Branch Manager from Toronto designating him as a "District Manager of the United States Division," and demanded his cooperation and assistance. (App. pps. 52b-54b).

**Limited Company's Use Of Branch For Its Field Testing Engineers.**

It appears that petitioner was extensively engaged in developing for the United States market agricultural implements which had to be tested in the field in the agricultural areas for which they were designed. The evidence disclosed that petitioner's Toronto officials and engineers dealt continuously with the Memphis Branch with respect to such testings. It shipped tractors and implements to the Branch for that purpose, and required the Branch to advance funds to the Canadian engineers while they were operating in the Branch's territory (App. pps. 54b-55b); required the Memphis Branch to receive shipments from Canada of experimental implements, arrange with landowners for use of ground for testing, furnish Canadian engineers with parts and tools from the Branch, and trace shipments made direct from Canada to testing sites. (App. pps. 54b-55b, 55b-59b, 59b-62b, 62b, 63b, 64b-66b & 67b-68b).

The Memphis Branch advanced to Canadian engineers for expenses or salaries $9,300.00 during a sixty-day period in 1955, and over a period of twenty-seven months, commencing with the last three months of 1953, a total of $15,678.50.

**The Limited Company's Disregard Of The Subsidiary's Corporate Identity And Its Use Of The Subsidiary As A Marketing Division.**

It is conceded that the present subsidiary and its predecessors at all pertinent times transacted business throughout the United States and had a place of business and transacted business in Memphis, Tennessee.

The Massey-Harris Company, Limited, Petitioner's predecessor, was a Canadian corporation engaged in the

manufacture, sale and distribution of farm implements. It claims to be about one hundred years old and claims that its operations are world-wide. The J. I. Case Plow Works became prominent in the tractor field in the United States in 1914 and in 1928 the Massey-Harris Company, Limited, bought it out, and thus entered the United States market.

> "The purchase had provided Massey-Harris with nation-wide distribution in the United States making it a full line contender for the American market." (Exh. 6 to Milne, p. 62)?

* * *

The Massey-Harris Company was at all times a wholly owned subsidiary, and staffed by officers and directors of the parent company. Elliot A. Adams, who was employed by the parent company, was placed in charge of Engineering for the subsidiary on December 1, 1936. (Tr. pps. 87-88 & Response to Request for Admissions No. 5).

Pripr to the amalgamation on August 16, 1953, a majority of the directors of the Massey-Harris Company were also directors of the Limited Company. Interlocking officers and Directors prior to amalgation were:

> James S. Duncan, Chairman of the Board and President of the Limited Company; Chairman of the Board of the subsidiary (Tr. p. 88);
>
> H. H. Ploom, "First Vice President of the Limited Company. President United States Division" (Tr. p. 89);

and the individuals who were Directors on both Boards, or a Director on one Board and an Officer on the other were:

C. N. Appleton, on both Boards (Tr. p. 90);

E. G. Burgess, Director of subsidiary and Vice President of Limited (Tr. pps. 90-91);

R. H. Metcalfe, Director of subsidiary and Vice President of the Parent (Tr. p. 91);

W. W. Mawhinney, Director of subsidiary and Vice President of Parent (Tr. p. 91);

W. E. Phillips, Director of both companies (Tr. pps. 91-92);

E. P. Taylor, Director of both companies (Tr. p. 92);

M. W. McCutcheon, Director of both companies (Tr. p. 93);

J. A. McDougold, Director of both companies (Tr. p. 93);

C. W. Webster, Director of both companies (Tr. pps. 93-94)

(See Directors listed in Exh. 10 to Bloom). App. p. 97b.

Proxy for voting all stock ran from Limited Company to Duncan or Bloom or Garrick or Milne. (Tr. p. 93). It is typical of all proxies used by the Limited Company. (Tr. p. 96).

Duncan, the then President of Massey-Harris Company, Ltd., made the appointment which transferred Bloom to Racine in 1949 (Tr. p. 205), and Duncan transferred him back to Toronto late in 1955. (Tr. p. 208).

After the United States subsidiaries were merged into the present subsidiary there was little if any change in the personnel of officers or Directors of either the Parent or subsidiary. (App. p. 107b).

Exhibit 2A thru J to Haggard, (App. pps. 80b-86b), dated May 10, 1955, leaves little if anything for debate that the United States Subsidiary was never an independent corporate entity, but—(a) was used as the only outlet in the United States for Limited Company products, and (b) was declared to be and was used as the unconditionally controlled and dominated "operating division" or instrumentality through which the Limited Company transacted all its business in the United States and West Tennessee. The entire exhibit was written by the President and Chairman of the Board of the Limited Company. (See App. pps. 80b-81b, 1st par. Exh. 2B).

It is addressed to (among others) the Memphis Branch Manager and the plaintiffs in this case—"Distributors." It refers to the "North American Organization," and the "United States Operation."

The words "Division" and "Divisional" used to designate the "United States Operation" appear nineteen (19) times. (App. pps. 80b-86b).

The Organization Structure (Exh. 2D-J) (App. pps. 83b-86b) emphasizes that the Limited Company executives retain an iron grip on every activity of the United States subsidiary. Petitioner's First Vice President is in charge of its "overall operations." Other vice presidents and officers are in supreme control of all functions —R. H. Metcalfe, "Capital Expenditures," "budget controls," "establishment of prices," etc. (App. p. 83b);

Burgess, "planning and location of new manufacturing facilities, equipment, machines, tools, etc." (App. p. 83b); Klemm, "Engineering"; Appleton, "Salaries, etc." (App. p. 83b); E. H. Metcalfe, "Accounting, budget controls, etc." (App. p. 84b); Scott, every activity with respect to industrial and wage relations (App. p. 84b). *On Exhibit 2G* (App. p. 84b) *the United States subsidiary is spelled out as an "Operating Division."*

The foregoing exhibit (No. 2A thru J to Haggard), in its entirety, shows clearly that officers of the subsidiary had no authority to act (even with respect to minor matters) without authority from the Parent.

Stipulated Exhibit 00823 A thru H, dated January 17, 1956, was written by petitioner's First Vice President to the Executive Vice President of the subsidiary. It reemphasizes Duncan's repeated emphasis in Exhibit No. 2 to Haggard. (App. pps. 87b-95b). Bloom refers to his letter, as "this directive." He emphasizes:

> "* * * It is recognized that in the case of larger machines, such as tractors and combines, the impetus for development may come more from top management than from sales and research departments. * * *." (App. p. 88b).

The letter repeatedly refers to the "U. S. Operation" and the "U. S. Department," and "Sales Division." That exhibit, pages F thru H (App. pps. 92b-95b), in setting up the Parent's personnel and operating structure, contains the following heading—"Western Hemisphere Engineering—Head Office Toronto." Among the Divisions listed is "U. S. Division."

Exhibit No. 14 to Haggard, dated December 31, 1953

(App. pps. 117b-118b), was written by Bloom during the period he said he was in charge of all United States Operations, including all Ferguson Operations, and charged with the duty of subsequently merging the two United States Subsidiaries. It was addressed to many people. It was addressed to several people in Detroit under the heading—"FERGUSON DIVISION." He insisted upon a "sharp reduction" in operation expenses, and refers to too many telephone calls—"between Detroit, Racine and Toronto by various departments." (App. p. 118b).

Exhibit No. 33A to Haggard, dated April 5, 1956, was written by Bloom in Toronto to Milne in Racine. (App. pps. 118b-121b). The subject of the letter is stated—"Critical Combine Situation." (Combines are probably petitioner's most important line of products). It refers to the serious situation that exists in respect to—"* * * combine shipments to the U. S. Branch Territories." It calls the subsidiary—"The U. S. Division." Bloom discusses the United States demand for combines, necessity for advance shipments, and refers to—"* * * requirement dates of our branches," and—

> "This letter is intended, once and for all, to point out to your sales divisions and the branch executives of our company's U. S. Division that we must have action." (App. p. 120b).

It continues—

> "It all adds up to one simple thing—that is that everyone of our branch managers must, without further insistence on the part of the top management, etc." (App. p. 121b).

Copies of that letter were mailed to—"All U. S. Branch Managers."

The following is from a "MEMORANDUM," dated July 19, 1954, produced from the files of the Memphis Branch Manager Haggard, addressed to L. M. Sweeney, from H. H. Bloom:

> "I am leaving for Toronto on the evening of July 27th, to attend a Board meeting on July 28th. *At that time, it will be necessary for me to make some definite statements about the projected outcome of our* 1954 *U.S.A. business.*"

Further evidence of disregard of corporate entity and complete integration is reflected by Duncan's letter of October 12, 1955, addressed to "All Vice Presidents, Department Heads, Works Managers and Branch Managers," and was produced from the files of the Memphis Branch Manager. (App. pps. 121b-123b).

Exhibit 22 A thru C to Haggard is a long letter dated August 31, 1954, announcing official appointments. It is from Bloom, addressed—

> "TO: ALL VICE PRESIDENTS, DEPARTMENT HEADS, BRANCH MANAGERS—MASSEY-HARRIS DIVISION DISTRIBUTORS—FERGUSON DIVISION"

This exhibit was produced from the files of the Memphis Branch Manager. Nothing could demonstrate more complete integration and disregard of separate corporate entity. It was written before Harry Ferguson, Inc., was merged into the Massey-Harris Company.

The following is an excerpt from stipulated Exhibit

314 B, showing how completely the Limited Company dominated the United States subsidiary:

"MASSEY-HARRIS COMPANY, LIMITED

September 24, 1953

MEMORANDUM

To: Mr. H. H. Bloom—President, *Racine*.

From: Mr. R. H. Metcalfe, Toronto.

Subject:

MASSEY-HARRIS-FERGUSON AGREEMENT

It is of the utmost importance that we fulfill our undertakings under the above Agreement with reference to the manufacture and sale of implements called upon to work with the Ferguson System. The President has accordingly instructed me to draw the attention of Heads of Divisions to these undertakings as set out in Clause 6 of the Agreement, as follows:

* * *

(Signed) R. H. Metcalfe
Vice President
General Administration"

A letter dated October 29, 1954, written by the subsidiary's Sales Manager to its Vice President (App. p. 124b) refers to "our Canadian plants." The writer says he recognizes—"that Our Management did not invite the strikebound situation which exists in *our Toronto Plant.*"

Stipulated Exhibit No. 00072, dated July 20, 1955, is a letter from petitioner's First Vice President, Toronto,

to a Vice President of the subsidiary at Racine, pressing for sales of newly developed implements, and contains the following:

> "* * * I am sure that you are aware of what is required." (App. p. 127b).

Petitioner publishes elaborate and colorful annual reports. The printer has done its best to reproduce pertinent parts of those reports for the years 1953, 1954 and 1955. (Exhs. Nos. 10, 11 & 12 to Bloom, App. pps. 96b-116b). Elaborate references are made to the United States Operation, but not once is it referred to as a subsidiary. It is always referred to as the "UNITED STATES DIVISION." (App. pps. 102b, 110b, 116b). Especial attention is directed to Appendix pages 102b through 103b, where petitioner shows its world-wide operation as a tree and portrays the "UNITED STATES DIVISION" as one of the largest of the branches. One sheet of the 1954 report (App. p. 102b) is headed with petitioner's full name, and under a sub-heading — "United States Division"—all United States factories are listed, and all sales branches, among which is Memphis, Tennessee. Milne, Executive Vice President of the subsidiary, testified that he did not know of any Division that Massey-Harris-Ferguson, Ltd., had in the United States other than Massey-Harris-Ferguson, Inc. (App. p. 78b), and that he did not know of any product engineering that Massey-Harris-Ferguson, Ltd., had in the United States other than Massey-Harris-Ferguson, Inc. (App. p. 78b).

Bloom testified that he was second only to Duncan insofar as the affairs of the Limited Company were concerned, and:

> "* * * I was First Vice President of the Canadian Company and I was President of the United States Division of the Company's operations." (App. p. 2b).

The subsidiary's corporate minutes repeatedly recite that approval of capital expenditures and budgets had to be obtained from the Parent company. Expenditures enumerated in the minutes range from $5,250.00 to $1,182,261.00, and as high as $2,203,311.00). (App. pps. 72b, 73b-75b, 75b-77b).

Klemm, Head of All Engineering for the Western Hemisphere, testified that he made his reports to the Chairman of the Board of Massey-Harris-Ferguson, Ltd. (App. pps. 80b & 11b).

During the twelve-month period prior to September, 1956, petitioner advanced to the subsidiary $5,000,000.00. The subsidiary's Executive Vice President said that the advance was made pursuant to a telephone arrangement; that the subsidiary had advanced money to the Parent; that it had been done in times past, and—"there is nothing abnormal about it." (App. p. 77b).

**Evidence Of Anti-Trust Violations and Conspiracy**

Respondent fully realizes that this question is one to be decided only on final hearing and by a jury. Plaintiffs contended that the evidence of anti-trust violations and conspiracy which came in as an inseparable part of the evidence on the motion to quash took this case out of the narrow holding actually made in the first part of the opinion in Cannon Mfg. Co. v. Cudahy Packing Co., 267 U.S. 333, and brought it within the concept expressed later in that opinion:

> "* * * There is here no attempt to hold the defendant liable for an act or omission of its subsidiary, or to enforce as against the latter a liability of defendant. Hence, cases concerning substantive rights, like Hart Steel Co. v. Railroad Supply Co., 244 U.S. 294; Chicago, etc., Ry. Co. v. Minn. Civic Ass'n, 247 U.S. 490; Gulf Oil Corp. v. Lewellyn, 248 U.S. 71; and U.S. v. LeHigh Valley R.R. Co., 254 U.S. 255, have no application."

and within the rule announced in an unbroken line of authorities holding that parent and subsidiary corporations cannot rely on separate corporate identity when there is evidence of a conspiracy between them and their officials to violate the anti-trust laws. The Cannon case was a simple suit by plaintiff against the parent for breach of the parent's contract with the plaintiff.

Plaintiffs submitted to respondent a long line of cases supporting the principle for which they contended.*

In line with the foregoing plaintiffs contended before respondent that Eastman Kodak v. Southern Photo Materials Co., 273 U.S. 359, and International Shoe Co. v. Washington, 326 U.S. 309, and other cases like them, demonstrate how little is left of the Cannon Manufacturing Company case. Federal Courts are following Inter-

*United States v. LeHigh Valley Ry. Co., 254 U.S. 255; Industrial Research Corp. v. General Motors Corp., 29 F. (2d) 623; Chicago M. & St. Paul Ry. Co. v. Minn. C. & C. Ass'n, 247 U.S. 490; Hart Steel Co. v. Railroad Supply Co., 244 U.S. 294; United States v. Gustav E. Kissell, 218 U.S. 601; Detroit Appliance Company v. GMC (D.C. Ill.), 5 F. Supp. 27; United Chronium v. GMC, 11 F. Supp. 694 (D.C. Conn.); United States v. GMC (7th Cir.), 121 F. (2d) 376; Trustees System v. Payne, 65 F. (2d) 103; Bator v. Boosey & Hawkes, Ltd., (S.D.N.Y.) 80 F. Supp. 294; Pergemont v. Frazer (E.D. Mich.), 93 F. Supp. 9; Central V. Ry. Co. v. S.N.E.R. Corp. (D.C. Mass.), 1 Fed. Supp. 1004; Alexander Young D. Co. v. Nat'l D. Products Corp. (D.C. Penn.), 33 Fed. Supp. 334; Continental Oil Co. v. Jones (D.C. Okla.), 26 Fed. Supp. 694; United States v. Sophony Corp., 333 U.S. 795; Ross-Bart Port Theatre, Inc., v. Eagle Lion Films, Inc., et al (D.C.E.D. Va.), 140 Fed. Supp. 401.

national Shoe Co. and holding that transacting business in a State by a foreign corporation through a contract with another corporation sufficiently meets the requirements of due process when service is had upon officers

There is in the record evidence supporting substantial- or agents of the contractee corporation.* If petitioner's contention is correct the foreign corporation could insulate itself by acquiring all the stock of the contractee corporation.

ly all the allegations in the complaint. The complaint is copied in petitioner's appendix, pages 22a-38a. The evidence is adequate to make a prima facie case of conspiracy and anti-trust violations. There is much more than was before the Court in Ross-Bart Port Theatre, Inc., v. Eagle Films, Inc., D.C.E.D. Va., 140 Fed. Supp. 401, which reviews the opinions of this Court on the question and supports plaintiffs' contention as just above stated.

It is believed that the evidence set forth under the foregoing headings and in the appendix is sufficient to render plaintiffs' contention here stated cumulative. Believing that plaintiffs were and are entitled to rely upon the contention stated under this heading, a narrative of that evidence is incorporated in the appendix (App. pps. 139b-147b), without encumbering this brief or the appendix with the testimony, and documentary evidence supporting it, leaving to petitioner the job of challenging the narrative in any way it can. Petitioner has not yet challenged or denied any of that evidence. Substantially all of it came from the testimony of petitioner's officials and documents produced from the files of its subsidiary,

*Scholnik v. National Airlines (6th Cir.), 219 F. (2d) 415; Clover Leaf Freight Lines v. Pacific Coast Wholesalers Ass'n. (7th Cir.), 166 F. (2d) 626; Consolidated Cosmetics v. D-A Pub. Co. (7th Cir.), 186 F. (2d) 906.

## CONCLUSION.

An interlocutory order, made within the admitted scope of the Court's jurisdiction, upon a question of fact, either upon conflicting evidence or upon undisputed evidence sustaining the order, will not be reviewed and reversed on petition for mandamus.*

It is fair to ask the Court to consider all of the foregoing and everything in the appendix in the light of petitioner's admission:

> "The facts upon which the District Court relied in asserting jurisdiction were conceded by the petitioner." (Petition, p. 19).

Respectfully submitted

Lowell W. Taylor,
Counsel for Respondent,
Hon. Marion Speed Boyd.

Of Counsel:
William A. Percy.

*U.S. v. Byers (2d Cir.), 144 F. (2d) 455; American Airlines v. Forman (3rd Cir.), 204 F. (2d) 230; In Re: Eastman Kodak Co. (3rd Cir.), 48 F. (2d) 125; Pennsylvania Turnpike Co. v. Welsh (3rd Cir.), 188 F. (2d) 447; Petition of Therianos (3rd Cir.), 171 F. (2d) 886; Hazeltine v. Kirkpatrick (3rd Cir.), 165 F. (2d) 683; Hyman v. McLindon (4th Cir.), 103 F. (2d) 294; Sunbeam Corp. v. Picard (6th Cir.), 227 F. (2d) 596; Comfort Equipment Co. v. Steckler (7th Cir.), 212 F. (2d) 371; Dairy Industries Supply Ass'n v. La Buy (7th Cir.), 207 F. (2d) 554; Sound Investment Co. v. Harper (8th Cir.), 178 F. (2d) 274; Shaheen v. Shriver (9th Cir.), 221 F. (2d) 715; Hydraulic Press Mfg. Co. v. Moore (8th Cir.), 185 F. (2d) 800; State of California v. U.S. District Court (9th Cir.), 213 F. (2d) 818; Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680; Roche v. Evaporated Milk Ass'n, 319 U.S. 21; Bankers Life and Casualty Co. v. Holland, 346 U.S. 379; Direct Transit Lines, Inc., v. Hon. Raymond W. Starr (6th Cir.), 219 F. (2d) 699.